Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

JOSEPH A. WAMBAUGH,
Petitioner,

v.

JAY C. SMITH,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Under *Heck v. Humphrey*, 512 U.S. 477 (1994), is a claim solely for money damages attributable to an unconstitutional conviction cognizable under 42 U.S.C. § 1983 when the conviction has been reversed on direct appeal but there is a possibility of a future conviction on a retrial?

2. Must a federal district court exercise jurisdiction over a state prisoner's 42 U.S.C. § 1983 action solely for money damages and stay, rather than dismiss, the case, when the plaintiff's underlying conviction has been reversed on direct appeal but the plaintiff remains incarcerated pending possible retrial?

3. In deciding *Heck v. Humphrey*, 512 U.S. 477 (1994), did this Court overrule *Deakins v. Monaghan*, 484 U.S. 193 (1988)?

RULE 29.6 STATEMENT AND PARTIES TO THE PROCEEDING

There are no parent or subsidiary corporations required to be listed under S. Ct. R. 29.6.

Petitioner Joseph A. Wambaugh ("Wambaugh") was the only appellant and Jay C. Smith ("Smith") was the only appellee in Case No. 95-7534 before the United States Court of Appeals for the Third Circuit.[1] Case No. 95-7534 was consolidated in the Third Circuit with Case No. 95-7533. The appellants in Case No. 95-7533 were John J. Holtz, Ronald F. Colyer, Victor Dove, John J. Purcell, William J. Lander, and Paul Yatron. Smith was the only appellee in Case No. 95-7533.

[1] Wambaugh's correct middle initial is "A.," not "P." as reflected in the captions below.

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PETITION FOR WRIT OF CERTIORARI

Joseph Wambaugh respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals, App. A, is reported at 87 F.3d 108 (3d Cir. 1996). The opinion was rendered in a consolidated appeal of two district court decisions in separate actions brought by Smith. The opinion of the district court in *Smith v. Wambaugh*, App. B, is reported at 887 F. Supp. 752 (M.D. Pa. 1995). The opinion of the district court certifying its *Wambaugh* decision for interlocutory appeal, App. D, is not reported. The opinion of the district court in *Smith v. Holtz*, App. C, is reported at 879 F. Supp. 435 (M.D. Pa. 1995). The opinions of the court of appeals accepting the *Wambaugh* case for appeal, App. E, and consolidating the *Wambaugh* and *Holtz* cases for the purposes of appeal, App. F, are not reported.

JURISDICTION

The court of appeals entered its judgment on June 26, 1996. Timely petitions for panel rehearing and suggestion for rehearing in banc were denied on August 20, 1996. Apps. G-H. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and the laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

28 U.S.C. § 2254(b)[2] provides:

> An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

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[2] This statute was in effect until April 26, 1996, when it was amended by the Anti-Terrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, Ch. 153, § 104 (codified at 28 U.S.C. § 2254(b)).

STATEMENT

A. Factual Background

In April 1986, a state jury convicted Jay C. Smith of the murders of Philadelphia school teacher Susan Reinert and her two children. Smith was sentenced to death for those crimes. On automatic direct appeal to the Pennsylvania Supreme Court, 42 Pa. Cons. Stat. § 9711(h), Smith raised nineteen (19) grounds for reversal of his conviction. On December 22, 1989, the court reversed Smith's conviction on just one (1) of those grounds—that out-of-court statements allegedly made by a co-conspirator implicating Smith and introduced at trial constituted inadmissible hearsay. *Commonwealth v. Smith*, 568 A.2d 600, 607-10 (Pa. 1989), App. I-6-12. The court remanded the case for a new trial, and Smith remained in prison. *Id.* at 610, App. I-12.

The case was never retried. In 1990, Smith moved for dismissal of all charges against him, claiming that the prosecution in the first trial failed to disclose potentially exculpatory evidence to his defense in violation of the federal and Pennsylvania constitutions. Smith's motion was denied by the trial court, and the Pennsylvania Superior Court affirmed. *Commonwealth v. Smith*, 591 A.2d 730 (Pa. Super. 1991). The Pennsylvania Supreme Court reversed on September 18, 1992, *Commonwealth v. Smith*, 615 A.2d 321 (Pa. 1992), App. J, holding that while a retrial would not violate Smith's right against double jeopardy under the United States Constitution, it would violate the parallel provisions of the Pennsylvania Constitution. Smith was immediately released.

B. Proceedings Below

Smith subsequently filed two § 1983 actions seeking only money damages for his purportedly unlawful conviction and confinement.[3] On September 15, 1993, Smith filed a § 1983 action against various state government officials involved in the criminal investigation and an attorney in the Pennsylvania Attorney General's office (the "*Holtz* case"). Smith alleged that their misconduct in connection with concealing potentially exculpatory evidence violated his rights under the Fifth, Sixth, and Fourteenth Amendments. On September 14, 1994, Smith filed a separate § 1983 claim against Joseph Wambaugh, a noted best-selling author of

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[3] Smith did not seek equitable or declaratory relief in either action.

crime books (the "*Wambaugh* case"). Smith alleged that in March 1992 he learned that Wambaugh conspired with police investigators to conceal evidence in order to profit from a book and a subsequent television mini-series based on the Reinert murders. The district court had jurisdiction over both cases pursuant to 28 U.S.C. § 1331.

The defendants in the separate *Holtz* and *Wambaugh* cases each argued that Smith's claims were time-barred on their face by the applicable two-year Pennsylvania statute of limitations.[4] Wambaugh argued that under this Court's decision in *Heck v. Humphrey*, 512 U.S. 477, ___, 114 S. Ct. 2364, 2372 (1994), Smith's § 1983 claims accrued as early as December 22, 1989, the date that the Pennsylvania Supreme Court reversed Smith's conviction on direct appeal, and at the latest in March 1992, the date Smith alleges that he discovered the facts allegedly supporting his claim against Wambaugh.[5] Wambaugh argued that since Smith's cause of action accrued in December 1989 (or March 1992 at the latest), the statute of limitations on Smith's § 1983 claims expired long before Smith filed his claims against Wambaugh and the *Holtz* defendants.

The district court rejected the defendants' arguments. In its first decision, *Smith v. Holtz*, the court recognized that this Court in *Heck* held that a § 1983 plaintiff's cause of action accrues when the plaintiff's conviction or sentence has been reversed on direct appeal. *Holtz*, 879 F. Supp. at 439, App. C-6 (citing *Heck*, 512 U.S. at ___, 114 S. Ct. at 2372). Nevertheless, the court expanded *Heck* to hold:

> [W]hen an accused has been tried and convicted, his section 1983 action . . . does not accrue before there has been *both* an invalidation of that conviction, *Heck, supra, and* a final termination of the criminal proceedings in favor of the accused.

879 F. Supp. at 442, App. C-11 (emphasis supplied). The district court concluded that Smith's cause of action did not accrue until the final termination of all criminal proceedings (i.e., upon his unconditional

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[4] In § 1983 cases, federal courts apply the state personal injury statute of limitations. *Wilson v. Garcia*, 471 U.S. 261, 276-80 (1985). In Pennsylvania, the applicable limitations period is two years. *Smith v. City of Pittsburgh*, 764 F.2d 188, 194 (3d Cir.), *cert. denied*, 474 U.S. 950 (1985); 42 Pa. Cons. Stat. § 5524.

[5] Smith has never contested this date, and the trial court relied on it to dismiss his two (2) state-law claims as untimely under the same two-year statute of limitations. *Smith v. Wambaugh*, 887 F. Supp. at 758, App. B-9-10.

release by the Pennsylvania Supreme Court on September 18, 1992), and therefore held that Smith's § 1983 cause of action against the *Holtz* defendants was not time-barred. *Id.* at 444, App. C-13.

In its second decision, *Smith v. Wambaugh*, the district court repeated its belief that Smith's cause of action did not ripen until the date of his complete discharge. 887 F. Supp. at 756, App. B-5. Thus, the court concluded that Smith's claim, brought within two years of his discharge (but more than two years after the date his conviction was reversed), was timely filed. *Id.*, App. B-6.

The district court certified both cases for immediate review. The United States Court of Appeals for the Third Circuit accepted the district court's certification and consolidated the appeals. Apps. D-F. The Third Circuit had jurisdiction pursuant to 28 U.S.C. § 1292(b).

On June 26, 1996, the court of appeals affirmed the decisions of the district court. 87 F.3d 108 (3d Cir. 1996), App. A. The Third Circuit held that "a claim that, if successful, would necessarily imply the invalidity of a conviction on a pending criminal charge is not cognizable under § 1983." *Id.* at 113, App. A-8. The court concluded that since the *potential* for Smith's conviction on a pending charge existed until September 18, 1992, the date the Pennsylvania Supreme Court ordered all charges against Smith dismissed, Smith's § 1983 actions against Wambaugh and the *Holtz* defendants did not accrue until that date. As a result, the court held that Smith's claims were not time-barred. *Id.*, App. A-8.

On July 9, 1996, Wambaugh filed a timely Petition for Panel Rehearing and Suggestion for Rehearing In Banc. The *Holtz* defendants also filed a timely Petition. On August 20, 1996, the Court of Appeals denied both petitions. Apps. G-H.

REASONS FOR GRANTING THE WRIT

This case presents an important and recurring issue that tests the bounds of this Court's precedent and divides the courts of appeals: How does the rule of *Heck v. Humphrey* apply when a conviction has been reversed on direct appeal, but there remains the possibility of a future conviction? In *Heck*, this Court held that a § 1983 claim for money damages that necessarily implies the invalidity of an outstanding conviction does not accrue until the conviction is reversed on direct appeal or otherwise invalidated. In this case, the Third Circuit ignored the bright-line rule of *Heck* by adding an additional element to the § 1983 cause of action—that there be no possibility of a future conviction on a pending charge. The Third Circuit's decision substantially departed from this Court's precedent and exposed a serious conflict among the United States courts of appeals.

I. THE DECISION OF THE THIRD CIRCUIT SUBSTANTIALLY DEPARTED FROM THIS COURT'S PRECEDENT

This case lies between two lines of Supreme Court precedent. One line of cases seeks to resolve the "collision" between federal habeas corpus and § 1983. *See Heck v. Humphrey*, 512 U.S. 477 (1994); *Preiser v. Rodriguez*, 411 U.S. 475 (1973). A second line of cases attempts to preserve the unflagging obligation of the federal courts to accept jurisdiction where it exists, while also respecting traditional notions of comity and federalism. *See Quackenbush v. Allstate Ins. Co.*, ___ U.S. ___, 116 S. Ct. 1712 (1996); *Deakins v. Monaghan*, 484 U.S. 193 (1988). The Third Circuit's decision unnecessarily and improperly forces these two lines of cases to conflict. Specifically, by requiring the absence of interference with a *potential* conviction as a substantive element of a § 1983 cause of action for money damages, the Third Circuit improperly expanded *Heck* and implicitly held that this Court overruled *Deakins* when it decided *Heck*. However, this Court's decision in *Quackenbush* makes plain that it remains committed to the *Deakins* rule that federal courts have no discretion to dismiss a claim solely for money damages when jurisdiction over the claim properly exists. This Court should grant this Petition because the Third Circuit's decision runs afoul of *Preiser, Heck, Deakins*, and *Quackenbush*.

A. Avoiding the Collision of Habeas Corpus and Civil Rights—*Preiser* and *Heck*

This Court has repeatedly and recently acknowledged that "federal courts have a strict duty to exercise the jurisdiction that is conferred upon them by Congress." *Quackenbush v. Allstate Ins. Co.*, ___ U.S. ___, ___, 116 S. Ct. 1712, 1720 (1996); *see also Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976) (recognizing the "virtually unflagging obligation of the federal courts to exercise the jurisdiction given them"). Given this duty, the problem of deciding when jurisdiction over, or the existence of, § 1983 claims should be denied in the interest of preserving habeas principles has proven especially troubling.

The federal habeas statute, 28 U.S.C. § 2254, and the Civil Rights Act, 42 U.S.C. § 1983, both provide individuals with access to a federal forum to address claims of unconstitutional treatment at the hands of state officials. While the exhaustion provisions of federal habeas require state prisoners to first seek redress in a state forum, exhaustion of state remedies is generally not a prerequisite to an action under § 1983. Thus, as state prisoners increasingly sought, and received, habeas-type relief in § 1983 actions, it was no surprise that the historical expansion of habeas corpus and § 1983 placed the statutes on a "collision course." *Heck*, 512 U.S. at ___, 114 S. Ct. at 2375 (Souter, J., concurring); *id.* at ___, 114 S. Ct. at 2369 (majority opinion) (recognizing "intersection of two of the most fertile sources of federal-court prisoner litigation—the Civil Rights Act of 1871 . . . and the federal habeas corpus statute"). In *Preiser v. Rodriguez*, 411 U.S. 475 (1973), and again in *Heck v. Humphrey*, 512 U.S. 477 (1994), this Court defined the contours of § 1983 actions in an effort to avoid the otherwise inevitable collisions between habeas and § 1983.

In *Preiser*, this Court held that habeas is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release—even though such a claim may come within the literal terms of § 1983. *Preiser*, 411 U.S. at 488-90. *Preiser* did not create an exception to the "no-exhaustion" rule of § 1983—it instead held that claims seeking release of state prisoners are *simply not cognizable* under § 1983 and must be brought first in a habeas corpus proceeding, with its attendant exhaustion requirement. *Heck*, 512 U.S. at ___, 114 S. Ct. at 2369.

While *Preiser* involved a § 1983 plaintiff seeking freedom (the very remedy federal habeas was designed to provide), *Heck* involved a state prisoner who indirectly challenged the constitutionality of his conviction in a suit for *money damages* under 42 U.S.C. § 1983. Heck

filed a § 1983 suit in federal district court seeking money damages against prosecutors and an investigator while the state court appeal from his outstanding conviction was pending. Heck alleged, among other things, that the defendants knowingly destroyed exculpatory evidence.

Since Heck sought money damages only, and not immediate or speedier release, his case was not governed by *Preiser*. *Id.* at ___, 114 S. Ct. at 2369. Though the facts in *Heck* differed from those in *Preiser*, the problem was analogous—Heck's § 1983 claim, if successful, would have "necessarily implied" the invalidity of his existing conviction. *Id.* at ___ n.2, 114 S. Ct. at 2368 n.2.

This Court resolved the potential conflict by declining to recognize a cause of action for money damages under § 1983 when such a claim would "necessarily imply" the invalidity of an outstanding state conviction. The Court reasoned:

> We think the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments applies to § 1983 damages actions that necessarily require the plaintiff to prove the unlawfulness of his conviction or confinement . . . .

Id. at ___, 114 S. Ct. at 2372.[6] The Court then directly stated its holding:

> We hold that, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, *a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal*, expunged by executive order, declared invalid by a state tribunal authorized to make such

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[6] In his concurring opinion, which was joined by three other Justices, Justice Souter criticized the *Heck* majority for its reliance on the common-law tort of malicious prosecution, believing that the common-law favorable-termination requirement should not dictate the elements of a § 1983 cause of action. *See Heck*, 512 U.S. at ___, 114 S. Ct. at 2375-78 (Souter, J., concurring in the judgment). While understanding the majority to adopt malicious prosecution's favorable-termination requirement into § 1983 *in toto*, the concurrence observed that the definition of "favorable termination" as understood by the framers of § 1983 did not include the list of § 1983 accrual triggers (including reversal on direct appeal) proposed by the majority. *Id.* at ___, 114 S. Ct. at 2377. Justice Souter would rely on statutory interpretation and "construe § 1983 in light of the habeas statute and its explicit policy of exhaustion." *Id.* at ___, 114 S. Ct. at 2380-81.

> determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254.

Id. at ___, 114 S. Ct. at 2372 (footnote omitted) (emphasis supplied). As in *Preiser*, the Court in *Heck* insisted that it was not abandoning its "teaching that § 1983 contains no exhaustion requirement beyond what Congress has provided. . . . We do not engraft an exhaustion requirement upon § 1983, but rather deny the existence of a cause of action." *Id.* at ___, ___, 114 S. Ct. at 2370, 2373.

The Court explained precisely how its holding would apply to future cases in which a state prisoner sought damages in a § 1983 suit:

> Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence . . . . [I]f the district court determines that the plaintiff's action, even if successful, will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit.

Id. at ___, 114 S. Ct. at 2372-73 (footnotes omitted). The Court then identified a situation in which courts should recognize the existence of the right of action, but delay the suit from proceeding immediately:

> For example, if a state criminal defendant brings a federal civil-rights lawsuit during the pendency of his criminal trial, appeal, or state habeas action, abstention may be an appropriate response to the parallel state-court proceedings.

Id. at ___ n.8, 114 S. Ct. at 2373 n.8. Thus, instead of denying the existence of a § 1983 cause of action during the pendency of state proceedings, the Court suggested abstention as the proper way to avoid potential conflict between the two proceedings.

By holding in *Heck* that a state prisoner's § 1983 claim for monetary damages *does not exist* until the prisoner's outstanding conviction is reversed on direct appeal, this Court necessarily instructed lower courts that federal jurisdiction, and the § 1983 cause of action, *do exist* once the conviction is so reversed. For Smith, that happened on December 22, 1989, *not* the date of his unconditional release.

B. The Third Circuit Improperly Expanded *Heck*

In affirming the district court's decision, the Third Circuit observed that "[i]n certain portions of the [*Heck*] opinion, the Court spoke in terms of claims that, if successful, imply the invalidity of 'outstanding' convictions." *Smith v. Wambaugh*, 87 F.3d at 112. However, the Third Circuit did not view the references to "outstanding" convictions as essential to the *Heck* holding, and treated the question of "potential" convictions as open. The Third Circuit then added an additional element to the § 1983 cause of action—that there be no possibility of a future conviction on a pending charge. The court held that if a § 1983 claim would necessarily imply the invalidity of a conviction on a *pending* criminal charge, the § 1983 claim is not cognizable: "[S]uch a claim does not accrue so long as the *potential* for a judgment in the *pending* criminal prosecution continues to exist." 87 F.3d at 113, App. A-8 (emphasis supplied).[7]

The Third Circuit thus modified *Heck* by adding the elimination of a potential future conviction as a substantive element to a § 1983 cause of action for damages. This effectively engrafted the full "favorable-termination" requirement of common-law malicious prosecution onto § 1983 actions. The Third Circuit added this requirement despite *Heck*'s clear teaching that the reversal of a conviction on direct appeal is sufficient to trigger the accrual of a § 1983 claim for damages—without regard to a potential future conviction. Further, by requiring state prisoners to do more than merely obtain reversal before suing under § 1983, the Third Circuit effectively added an exhaustion requirement onto § 1983 actions—a requirement expressly rejected in *Heck* and *Preiser*.

The Third Circuit went far beyond the issue that concerned this Court in *Heck*—the risk that a § 1983 damages action would be utilized as a collateral attack on an outstanding state conviction. In fact, this Court included in its list of accrual "triggers" events that permit the possibility of continued incarceration, retrial, and conviction. For example, this Court stated that a state prisoner's § 1983 cause of action accrues when the prisoner's conviction is "called into question by a federal court's issuance of a writ of habeas corpus." *Heck*, 512 U.S. at ___, 114 S. Ct. at 2372.

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[7] The impact of the Third Circuit's decision in this case was to keep alive Smith's § 1983 claims by effectively "extending" the statute of limitations by six (6) months (if measured from the March 1992 date recited in Smith's Complaint), or thirty-four (34) months (if measured from December 1989, when Smith's conviction was reversed on direct appeal).

When a writ of habeas corpus is issued, it is normally conditional in nature, requiring release from custody only if the state does not elect to retry the defendant within a fixed period. *See, e.g.*, *Herrera v. Collins*, 506 U.S. 390, 402-03 (1993). Thus, the Third Circuit's decision is simply inconsistent with *Heck*.

C. The Third Circuit's Expansion of *Heck* Conflicts with *Deakins* and *Quackenbush*

The Third Circuit justified its expansion of the *Heck* rule as a means to avoid conflict between an ongoing state criminal proceeding and a § 1983 action that would necessarily challenge the legality of a future conviction:

> If such a [§ 1983] claim could proceed while criminal proceedings are ongoing, there would be a potential for inconsistent determinations in the civil and criminal cases and the criminal defendant would be able to collaterally attack the prosecution in a civil suit.

87 F.3d at 113, A-8. The Third Circuit sought to prevent any potential for § 1983 damages actions to interfere with ongoing state criminal prosecutions. Nonetheless, the solution proposed by the Third Circuit unnecessarily departs from this Court's precedent.

There appear to be two possible solutions to the problem that faced the Third Circuit. First, *Heck* could be expanded to require, as an element of the § 1983 action, not only reversal on direct appeal, but also the foreclosure of all possibility of a future conviction. This was the course taken by the Third Circuit. Second, federal courts could simply apply *Heck* as written, accept the jurisdiction conferred on them, and stay the § 1983 action until the state proceedings conclude. If the state prisoner is convicted on retrial, *Heck* would act to bar the § 1983 action and the claim would be dismissed. If, however, the prisoner is not convicted (because of acquittal, dismissal of charges, or other termination), the stay would be lifted and the § 1983 action could proceed. This Court's precedent, and the policy underlying that precedent, mandate the latter approach.

In examining claims solely for money damages brought under § 1983, this Court has held that where commencing with the federal action could interfere with a pending state proceeding, federal courts must stay and not dismiss the federal claims. *Deakins v. Monaghan*, 484 U.S. 193 (1988). In *Deakins*, the plaintiff sought money damages in a § 1983 action

against various officials. The plaintiff alleged that the defendants executed a search warrant in violation of his federal constitutional rights. The evidence taken during the search was the subject of an ongoing state grand jury investigation. *Id.* at 201-02.

The *Deakins* defendants sought to have the case dismissed. They argued that the doctrine of *Younger v. Harris*, 401 U.S. 37 (1971), which requires a federal court to abstain where a plaintiff's federal claims could be adjudicated in a pending state judicial proceeding, applies to complaints seeking only monetary relief. The defendants also argued that the district court has the discretion to dismiss rather than stay a federal complaint for damages where abstention is required. This Court rejected the second argument and did not reach the first:

> We need not decide the extent to which the *Younger* doctrine applies to a federal action seeking only monetary relief, however, because even if the *Younger* doctrine requires abstention here, *the District Court has no discretion to dismiss rather than to stay claims for monetary relief that cannot be redressed in the state proceeding.*

Deakins, 484 U.S. at 202 (emphasis supplied). This Court recognized that the rule requiring a district court to stay rather than dismiss claims not cognizable in the parallel state proceeding

> allows a parallel state proceeding to go forward without interference from its federal sibling, while enforcing the duty of federal courts "to assume jurisdiction where jurisdiction properly exists."

Id. at 202-03 (quoting *Williams v. Red Bank Bd. of Ed.*, 662 F.2d 1008, 1024 (3d Cir. 1981)).[8]

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[8] The Court also recognized the potential problems caused by a different result: "[U]nless [the federal court] retained jurisdiction during the pendency of the state proceeding, a plaintiff could be barred permanently from asserting his claims in the federal forum by the running of the applicable statute of limitations." *Id.* at 203 n.7. By the same token, defendants have a vital and legitimate interest in having the statute of limitations begin to run at the earliest appropriate point, given the salutary purpose of promptly placing defendants on notice of the existence of a claim against them and allowing investigation and preparation of a defense. *See Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945).

In *Quackenbush v. Allstate Ins. Co.*, ___ U.S. ___, 116 S. Ct. 1712 (1996), this Court reaffirmed the principles embraced by the Court in *Deakins*. The Court recognized that "federal courts have a strict duty to exercise the jurisdiction that is conferred upon them by Congress." *Id.* at ___, 116 S. Ct. at 1720. This Court then explained that, in certain "exceptional circumstances," abstention is warranted due to an important countervailing interest. *Id.* at ___, 116 S. Ct. at 1720-21 (citing examples). While recognizing that federal courts have the authority to abstain from exercising jurisdiction in all cases in which the court has discretion to grant or deny relief, this Court acknowledged that it has

> applied abstention principles to actions "at law" only to permit a federal court to enter a stay order that postpones adjudication of the dispute, not to dismiss the federal suit altogether.

Id. at ___, 116 S. Ct. at 1722.

Observing that "we have permitted federal courts applying abstention principles in damages actions to enter a stay, but we have not permitted them to dismiss the action altogether," this Court concluded: "[F]ederal courts have the power to dismiss or remand cases based on abstention principles only where the relief being sought is equitable or otherwise discretionary." *Id.* at ___, 116 S. Ct. at 1728 (citing to discussion of cases, including *Deakins*). Since *Quackenbush* involved an action for damages, this Court concluded that the district court's remand order was unwarranted. *Id.* at ___, 116 S. Ct. at 1728.[9]

Thus, when a § 1983 claim for money damages could interfere with a pending state proceeding, federal district courts should stay the § 1983 action and must not abdicate their jurisdiction or their responsibility by dismissing the claim:

> Unlike the outright dismissal or remand of a federal suit, . . . an order merely staying the action "does not constitute

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[9] In *Tower v. Glover*, 467 U.S. 914, 923 (1984), this Court observed that it had not yet decided whether federal district courts must abstain from deciding a § 1983 suit for damages stemming from an unlawful conviction when state court proceedings could not provide such a remedy. Here, of course, Smith's state court criminal appeal could not provide such a damages remedy. *Deakins* and *Quackenbush* appear to provide part of the answer to the issue left open in *Tower* by declining to order dismissal in a pure damages action. On the other hand, the Third Circuit's rule effectively answers the question by denying the cause of action.

> abnegation of judicial duty. On the contrary, it is a wise and productive discharge of it. There is only postponement of decision for its best fruition."

Id. at ___, 116 S. Ct. at 1723 (quoting *Louisiana Power & Light Co. v. Thibodaux*, 360 U.S. 25, 29 (1959)).

In *Heck*, this Court explicitly recognized that the abstention principles embodied in *Deakins* and *Quackenbush* provide the solution to the problem the Third Circuit believed this case presented. In footnote 8 of the *Heck* opinion,[10] the Court stated that "if a state criminal defendant brings a federal civil-rights lawsuit during the pendency of his criminal trial, appeal, or state habeas action, abstention may be an appropriate response to the parallel state-court proceedings." *Heck*, 512 U.S. at ___ n.8, 114 S. Ct. at 2373 n.8. Instead of denying the existence of a cause of action when there is an ongoing state proceeding, the Court recognized that abstention is the proper way to avoid potential conflict. Under the rule of *Deakins* and *Quackenbush*, abstention in actions for money damages not obtainable in the parallel state proceeding must take the form of a stay, not dismissal. *See Deakins*, 484 U.S. at 202; *Quackenbush*, ___ U.S. at ___, 116 S. Ct. at 1728; *id.* at ___, 116 S. Ct. at 1728 (Scalia, J., concurring) (opining that it is impermissible for a federal court, in any circumstance, to dismiss a suit for damages on abstention principles).

The Third Circuit therefore disregarded the precedential solution to the problem presented when a § 1983 plaintiff awaits retrial after his conviction has been reversed on direct appeal: district courts should exercise jurisdiction over the claim and stay the action until resolution of the parallel state proceeding. This solution maintains fidelity to the balance achieved by the two lines of precedent implicated here. Under *Preiser* and *Heck*, federal courts must accept jurisdiction over a § 1983 cause of action for money damages where the action will not attack an outstanding conviction. Under *Deakins* and *Quackenbush*, federal courts must stay rather than dismiss the claim if it could interfere with a pending state proceeding. By engrafting an additional requirement onto the *Heck* rule (and thereby onto the substantive elements of a claim under 42 U.S.C. § 1983), the Third Circuit destroyed this balance. This Court should review and reverse the Third Circuit's departure from the teachings of *Preiser*, *Heck*, *Deakins*, and *Quackenbush*.

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[10] The Third Circuit did not refer to *Heck*'s footnote 8.

II. THE DECISION OF THE THIRD CIRCUIT EXPOSED A SERIOUS AND DIRECT CONFLICT AMONG THE UNITED STATES COURTS OF APPEALS ON THIS IMPORTANT MATTER

The Third Circuit veered into a direct conflict not only with decisions of this Court, but also with the decisions of four (4) other United States courts of appeals. In *Heck*, this Court adopted what seemed to be a bright-line test for determining when a § 1983 claim for money damages accrues for a state prisoner whose action implicitly challenges the constitutionality of his conviction or sentence. In the two years since *Heck* was decided, however, the courts of appeals have struggled in applying the *Heck* rule, resulting in severe inter-circuit conflict on the issues presented in this case.

Decisions from the Second, Fifth, Sixth, and Seventh Circuits closely adhere to the rule of *Heck*, requiring nothing more than a reversal on direct appeal before a state prisoner's § 1983 damages action accrues, without regard to the possibility of a future conviction. In direct contrast, the Third Circuit joins the Ninth, Tenth, and Eleventh Circuits, which view a potential conviction as an absolute bar to a § 1983 claim. Highlighting the confusion surrounding this issue, even the courts that are in agreement as to the Third Circuit's *result* differ markedly in their *rationales*.

A. The Decision of the Third Circuit Directly Conflicts with Decisions of the Fifth Circuit—*Davis v. Zain*, 79 F.3d 18 (5th Cir. 1996), and *Mackey v. Dickson*, 47 F.3d 744 (5th Cir. 1995)

In *Davis v. Zain*, 79 F.3d 18 (5th Cir. 1996), the Fifth Circuit was faced with the same material facts presented in this case, but it reached the opposite result. The Fifth Circuit held that *Heck* does not bar a § 1983 claim for damages by a person awaiting retrial after a state court reverses his conviction on direct appeal. While the Third Circuit essentially treated *Heck*'s repeated references to "outstanding convictions" as dictum in expanding the rule to include "potential convictions," the Fifth Circuit held that this Court meant what it said and that a potential conviction does not bar a § 1983 cause of action.

In 1990, Davis was convicted of capital murder. On direct appeal, "the Court of Appeals of Texas reversed Davis's 1990 conviction and remanded for a new trial, after finding that the District Attorney engaged in prosecutorial misconduct and suborned perjury." *Davis*, 79 F.3d at 18. While awaiting retrial, Davis filed a § 1983 damages action against the investigator, medical examiner, and county medical examiner's office for

their roles in securing Davis's allegedly unconstitutional conviction. The district court relied on *Heck* to dismiss Davis's § 1983 suit "on the grounds that the criminal proceeding against Davis had not terminated in his favor and, consequently, that his § 1983 claim had not accrued." *Id.* at 19.

The Fifth Circuit reversed. According to the Fifth Circuit, this Court decided *Heck* to "avoid collateral attacks by plaintiffs on convictions against them that are 'still outstanding.'" *Id.* The court concluded that Davis's § 1983 damages claim accrued when he obtained a reversal of his conviction on direct appeal, because Davis no longer had an outstanding conviction that could be attacked through a civil suit. Thus, the reversal of Davis's conviction satisfied *Heck*'s invalidation requirement:

> Davis squarely meets the requirements of *Heck*. The question arising from Davis's criminal trial over which he is now suing—his allegedly wrongful 1990 conviction in state court using tainted evidence—has been fully adjudicated in his favor: *The conviction has been reversed. We therefore conclude that his § 1983 claim relating to that conviction has accrued.*

Id. (emphasis supplied). In contrast to the Third Circuit, the Fifth Circuit did not view Davis's pending retrial and potential conviction as bars to the accrual of his § 1983 claim.

Like the Third Circuit in this case, the Fifth Circuit in *Davis* was also faced with the possibility that a state prisoner's § 1983 action based on prosecutorial misconduct might conflict with his pending retrial in state court. However, instead of resolving the potential conflict by expanding *Heck*, the Fifth Circuit respected *Heck*'s footnote 8. Although it was "unlikely" that Davis's § 1983 suit would implicate the validity of his pending retrial for capital murder, the Fifth Circuit instructed the district court to resolve any conflict between Davis's § 1983 claim and his criminal retrial under the federal abstention doctrines:

> If some presently unforeseen or unarticulated conflict arises between the criminal retrial and the pending § 1983 case, the district court may consider the propriety of a stay, or, perhaps, abstention.

Id. (citing *Heck*, 512 U.S. at ___ n.8, 114 S. Ct. at 2373 n.8).[11] Unlike the Third Circuit in this case, the Fifth Circuit did not engraft an additional substantive element onto the § 1983 cause of action.[12] The inter-circuit conflict is plain.

A second case from the Fifth Circuit, *Mackey v. Dickson*, 47 F.3d 744 (5th Cir. 1995), highlights another important defect in the Third Circuit's reading of *Heck*. Mackey filed a § 1983 claim of unlawful arrest. It was unclear on the record before the court whether Mackey had been tried and convicted. The district court dismissed the case without prejudice. The Fifth Circuit reversed, noting that it could not predict with any certainty whether Mackey's claim for unlawful arrest would imply the invalidity of a future conviction. The Fifth Circuit adopted a wait-and-see approach:

> At this point it is simply premature to determine whether or not Mackey's damage claims are barred under *Heck*. . . . Accordingly, the district court erred in dismissing the claims on the basis of *Heck*. The court may—indeed should—stay proceedings in the section 1983 case until the pending criminal case has run its course, as until that time it may be difficult to determine the relation, if any, between the two.

Id. at 746. The Fifth Circuit recognized that where a federal court is concerned that a § 1983 action could undermine a future conviction, the court should accept jurisdiction and stay the § 1983 action.

The rule announced by the Third Circuit in this case would require just what the Fifth Circuit rejected in *Mackey*. The Third Circuit assumed that had Smith brought his § 1983 action during the pendency of his

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[11] This Court's recent decision in *Quackenbush v. Allstate Ins. Co.*, ___ U.S. ___, ___, 116 S. Ct. 1712, 1723 (1996), clarifies that, even under *Younger* abstention, federal courts must stay rather than dismiss claims for money damages when jurisdiction otherwise exists.

[12] *See also Marts v. Hines*, 68 F.3d 134, 135 (5th Cir. 1995) (when § 1983 complaint implicates the integrity of pending state criminal proceedings, *Deakins v. Monaghan* requires federal court to stay its hand), *reh'g granted en banc*, 79 F.3d 17 (1996). *But cf. Brandley v. Keeshan*, 64 F.3d 196, 199 n.2 (5th Cir. 1995) (suggesting malicious prosecution's favorable-termination requirement impacts § 1983 analysis), *cert. denied*, ___ U.S. ___, 116 S. Ct. 947 (1996); *Hamilton v. Lyons*, 74 F.3d 99 (5th Cir. 1996) (pre-*Davis* case cited by Third Circuit as holding that *Heck* prevents accrual of § 1983 claim that would necessarily imply the invalidity of conviction on pending criminal charge; Third Circuit did not address *Davis*).

retrial, success on his § 1983 action would have *necessarily* implied the invalidity of his potential conviction on Pennsylvania double-jeopardy grounds. In reality, had Smith instituted his § 1983 action when it accrued (either in December 1989 or in March 1992), the impact of the alleged misconduct on his retrial would have been uncertain at best. Even the Pennsylvania Supreme Court, when it reversed Smith's conviction in 1989, assumed that Smith could be retried and convicted despite the alleged misconduct. *See Commonwealth v. Smith*, 568 A.2d at 610 n.8, App. I-12-13. Likewise, both the state trial court and the Superior Court were uncertain whether the alleged misconduct would bar a retrial or conviction on double-jeopardy grounds. It was only in September 1992, when the Pennsylvania Supreme Court revisited the issue, that it became clear that the alleged misconduct would bar the potential for a second conviction as a matter of purely state law.

According to the Third Circuit's logic, if Smith had sued prior to September 1992, the district court would have definitely concluded that success on Smith's § 1983 claim would have *necessarily* implicated state double-jeopardy principles. To the contrary, the district court could not have predicted the future with such certainty. Further, the *federal* district court would not have been in a position to decide unsettled issues of *state* double jeopardy, *see Commonwealth v. Smith*, 615 A.2d at 325, App. J-6-7,[13] nor would such *state*-law issues have been dispositive of *federal* issues in a § 1983 action. While the Third Circuit in this case had the uncommon benefit of 20/20 hindsight, it announced a rule that forces district courts in other cases to necessarily predict the uncertain future. As the Fifth Circuit reasoned in *Mackey*, *Heck* does not require a federal court to yield jurisdiction over an accrued § 1983 claim to such speculation.[14]

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[13] "[I]t is possible that some courts would not view the prosecutorial misconduct in this case as rising to the level of subversion of constitutional rights. Regardless of what may be required under the federal standard, however, our view is that the prosecutorial misconduct in this case implicates the double jeopardy clause of the Pennsylvania Constitution." *Id.*, App. J-7.

[14] District court decisions also conflict on whether courts may dismiss rather than stay a § 1983 action pending the disposition of a pending criminal charge. *Compare Estes-El v. Long Island Jewish Medical Center*, 916 F. Supp. 268, 269-70 (S.D.N.Y. 1995) (staying § 1983 action until disposition of pending criminal charges), *and Murphy v. Simpson*, No. 94 CV 5610, 1995 WL 362447, at *3 (E.D.N.Y. June 1, 1995) (citing *Deakins* to support stay of pretrial detainee's § 1983 action pending disposition of state criminal proceedings), App. O-4, *with Hudson v. Chicago Police Dep't*, 860 F. Supp. 521 (N.D. Ill. 1994) (interpreting *Younger* and *Heck* to require dismissal of pretrial detainee's § 1983 claim for damages until plaintiff's acquittal or invalidation of conviction), *and Daniel v. Ruph*, No. C-94-3317 EFL, 1994 WL 589352, at *1-2 (N.D. Cal. Oct. 12, 1994) (dismissing pretrial

B. The Decision of the Third Circuit Further Conflicts with Decisions of the Second, Sixth, and Seventh Circuits

1. The Second Circuit—*Pinaud v. County of Suffolk*, 52 F.3d 1139 (2nd Cir. 1995)

The Third Circuit's decision conflicts with the Second Circuit's decision in *Pinaud v. County of Suffolk*, 52 F.3d 1139 (2nd Cir. 1995). In July 1987, the state appellate court vacated Pinaud's conviction and remitted the charges back to the trial court. *Id.* at 1144. Six months later (while Pinaud was in prison serving a separate federal sentence) the district attorney unsuccessfully re-prosecuted Pinaud on the same charges, and the court dismissed the charges in October 1988. *Id.* at 1145. Pinaud filed a § 1983 claim in July 1991.

The Second Circuit held that Pinaud's § 1983 claims were barred by the applicable statute of limitations. Though not raised by Pinaud, the court stated that an analysis under *Heck* would yield the same result: "Assuming that *Heck* applies to Pinaud's claims, these would still be barred because his original conviction and sentence was [sic] invalidated by the state in 1987, long before the date when an action would be timely." *Id.* at 1158 n.18. Importantly, although the state appellate court vacated Pinaud's conviction in July 1987, the state continued to prosecute Pinaud, and charges remained pending against him until October 1988. Nevertheless, the Second Circuit did not engraft additional requirements onto the *Heck* rule, as did the Third Circuit. *Cf. Woods v. Candela*, 47 F.3d 545 (2d Cir.), *cert. denied*, ___ U.S. ___, 116 S. Ct. 54 (1995) (pre-*Pinaud* decision holding that plaintiff's § 1983 damages action for unlawful search and arrest accrued upon reversal of conviction, not on earlier date of arrest as previously held), *on remand from* 115 S. Ct. 44 (1994).

2. The Sixth Circuit—*Schilling v. White*, 58 F.3d 1081 (6th Cir. 1995)

The Third Circuit's decision conflicts with the Sixth Circuit's decision in *Schilling v. White*, 58 F.3d 1081 (6th Cir. 1995). In *Schilling*, the Sixth Circuit decided that a prisoner whose criminal conviction had not

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detainee's § 1983 claim because success on claim would imply invalidity of ongoing criminal proceedings), App. P-2.

yet been set aside could not proceed with his § 1983 damages claim for alleged violations of his Fourth Amendment rights. The Sixth Circuit reasoned that, under *Heck*, proof of constitutional injury requires proof that the conviction has been set aside; absent such proof, a necessary element of the § 1983 cause of action is missing. *Id.* at 1086. The court concluded that Schilling could bring his § 1983 claim once his conviction was set aside. *Id.* at 1087 n.5. Importantly, the Sixth Circuit was not concerned about the possibility of further prosecution as a bar to Schilling's § 1983 claim. To the contrary, the court applied *Heck* according to its plain meaning.

3. The Seventh Circuit—*Bell v. Peters*, 33 F.3d 18 (7th Cir. 1994)

The Third Circuit's decision conflicts with the decision of the Seventh Circuit in *Bell v. Peters*, 33 F.3d 18 (7th Cir. 1994), which implied that *Heck* does not require the impossibility of further prosecution before a person's § 1983 damages claim accrues. In *Bell*, the court of appeals remanded the case to the district court to determine whether the appellant's conviction had been invalidated:

> Since [appellant] is appealing from his prison cell, it may seem obvious that he cannot meet the new [*Heck*] requirement and therefore that a remand to allow him to re-plead would be an exercise in futility. But we cannot be certain. . . . It is [possible] that the conviction of which he is complaining was set aside but that he was later retried and again convicted; *this would limit but not necessarily eliminate his claim to damages for the first conviction.*

Id. at 19 (emphasis supplied). The Seventh Circuit therefore embraced exactly what the Third Circuit rejected in this case—that the reversal of a conviction on direct appeal triggers the accrual of a § 1983 damages claim flowing from that conviction, despite the possibility of further prosecution.[15]

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[15] *See also Rooding v. Peters*, 92 F.3d 578, 581 (7th Cir. 1996) (§ 1983 claim that is analogous to malicious prosecution accrues when the conviction is invalidated); *Simpson v. Rowan*, 73 F.3d 134, 138-39 (7th Cir. 1995) (requiring stay of post-conviction § 1983 claims for damages based on alleged Fourth Amendment violations pending ongoing state court proceedings), *cert. denied*, No. 95-8993, 1996 WL 282290 (U.S. Oct. 7, 1996).

C. Decisions of the Ninth, Tenth, and Eleventh Circuits Reach the Same Result as the Third Circuit on Different Rationales

1. The Ninth Circuit—*Alvarez-Machain v. United States*, ___ F.3d ___, 1996 WL 537212 (9th Cir. Sept. 24, 1996)

The Ninth Circuit recently interpreted *Heck* to bar a claim under the Federal Tort Claims Act (FTCA) that necessarily implicated the validity of pending criminal charges. *Alvarez-Machain v. United States*, ___ F.3d ___, 1996 WL 537212 (9th Cir. Sept. 24, 1996), App. K. Dr. Alvarez-Machain was acquitted in December 1992 of murdering an agent for the United States Drug Enforcement Agency. Alvarez-Machain subsequently brought suit under 42 U.S.C. § 1983 and various other federal statutes, including an administrative claim against the United States under the FTCA. The United States moved to dismiss the FTCA claim as time-barred on the ground that Alvarez-Machain did not file suit within the applicable two-year statute of limitations. *Id.* at ___, 1996 WL 537212, at *3, App. K-4.

The Ninth Circuit held that Alvarez-Machain's FTCA claim was not time-barred because his claim did not accrue until the date of his acquittal, not on the earlier date when he knew or should have known of his right to sue:

> Generally a claim accrues when the plaintiff knows, or in the exercise of reasonable diligence should know, of both the injury and its cause. Here, Alvarez-Machain did not have a sufficient basis to bring his claims . . . until after he had successfully challenged the criminal charges facing him. Indeed, had he filed an administrative claim . . . prior to obtaining his acquittal, the claim should have been dismissed as premature . . . because [it] necessarily implicated the validity of his criminal charges.

Id. at ___, 1996 WL 537212, at *3-4 (citing cases, including *Heck*, 512 U.S. 477, 114 S. Ct. 2364), App. K-5-6. The Ninth Circuit's rationale in *Alvarez-Machain* differs from that of the Third Circuit in one important respect. While the Third Circuit reads *Heck* to bar a plaintiff's claim if it would imply the invalidity of a future *conviction* on a pending charge, the Ninth Circuit reads *Heck* to bar a plaintiff's claim that implicates the validity of a pending *charge*. *Cf. Day v. Zubel*, ___ P.2d ___, ___, 1996 WL 467167, at *3 (Nev. Aug. 16, 1996) (§ 1983 cause of action accrued

upon dismissal of charges, not when conviction was previously reversed with possibility of new trial), App. L-4. Both the Third and Ninth Circuits, however, ignored *Heck*'s footnote 8 and the *Deakins* stay doctrine.

2. The Tenth Circuit—*White v. Eldridge*, 70 F.3d 123, 1995 WL 668009 (10th Cir. Nov. 9, 1995)

Like the Third Circuit, the Tenth Circuit would dismiss § 1983 damages claims that would necessarily imply the invalidity of a potential conviction. Unlike the Third Circuit, however, the Tenth Circuit acknowledged, then rejected, the possibility of a stay under *Deakins*. In *White v. Eldridge*, 70 F.3d 123, 1995 WL 668009 (10th Cir. Nov. 9, 1995), App. M,[16] White filed a § 1983 claim for equitable relief and damages in federal court before state criminal proceedings had begun. The Tenth Circuit affirmed the district court's dismissal of the claim, holding that this Court partially overruled *Deakins* when it decided *Heck*:

> [W]e note that ordinarily, a district court perceiving a *Younger* concern should stay rather than dismiss a claim for monetary relief that cannot be redressed in the pending state court proceeding. *See Deakins v. Monaghan*, 484 U.S. 193, 202 (1988). However, the injury for which White seeks damages appears to be his imprisonment and trial. If White is convicted in state court, no action will lie under section 1983 to recover for damages "caused by actions whose unlawfulness would render a conviction or sentence invalid" unless the conviction is successfully challenged via some other means. *Heck v. Humphrey*, 114 S. Ct. 2364, 2372-73 and n.7 (1994). We therefore find that, in light of this uncertainty, dismissal of the damages claim was appropriate.

Id. at *2, App. M-3; *see also Miller v. Jones*, No. 96-6077, 1996 WL 421933, at *1 (10th Cir. July 29, 1996) (prisoner's § 1983 claim for money damages did not accrue upon reversal of a conviction via joint application filed by prosecution and defense where prisoner awaited new trial),

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[16] An unpublished opinion from the Tenth Circuit Court of Appeals may be cited if the opinion has persuasive value on a material issue, and a copy is attached to the citing document. *See* General Order of November 29, 1993, suspending 10th Cir. Rule 36.3 until December 31, 1995, or further order.

App. N-1-2. Thus, the Tenth Circuit reached the same result as the Third Circuit, but only by holding that *Heck* partially overruled *Deakins*—a position not expressly endorsed by the Third Circuit, but implied by its decision.

3. The Eleventh Circuit—*Kelly v. Serna*, 87 F.3d 1235 (11th Cir. 1996)

The Eleventh Circuit uses yet a different approach to reach the Third Circuit's result. The Eleventh Circuit has held that a *Heck* "reversal" occurs "on the date a court of appeals of competent jurisdiction reverses a conviction and no retrial is permitted." *Kelly v. Serna*, 87 F.3d 1235, 1240 (11th Cir. 1996) (footnotes omitted).[17] The court reached this conclusion by defining the word "reversal":

> Traditionally, setting aside a conviction and remanding for re-trial or dismissal was termed a "vacation" of the conviction; "reversal" of a conviction meant no re-trial was permitted. In this context, the Supreme Court's use of the term "reversal" is appropriate to signify the termination of criminal proceedings. As courts have come to use these terms without regard to this distinction, however, we take this opportunity to make clear that by "reversal" we mean without the possibility for retrial.

Id. at 1240 n.3. The Eleventh Circuit would thus reach the same result as the Third Circuit, not by adding a requirement to *Heck*, but by further defining the terms used in the Court's opinion.

D. The Magnitude of Conflict Among the Circuits Demonstrates the Need for This Court to Now Resolve an Important and Recurring Issue

In *Heck*, this Court sought to resolve the uncertainty arising at the intersection of the habeas corpus statute and § 1983. The decision of the Third Circuit, coupled with the conflict among the courts of appeals, demonstrates that an important and unsettled issue remains in the wake of *Heck*. Resolution of this issue will substantially impact the rights of the

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[17] *Kelly* involved a prisoner's *Bivens* claim; the court determined that the *Heck* rule applies equally to both § 1983 and *Bivens* claims. *Id.* at 1239.

thousands of individuals—both plaintiffs and defendants—involved in § 1983 actions every year.

The decision of this case will have an impact far greater than its effect on litigants Smith and Wambaugh. The issue at hand—whether *potential* convictions bar actions for money damages under § 1983—will recur in at least three distinct settings: (1) when suits are brought by pretrial detainees; (2) when suits are brought by persons awaiting retrial after their first conviction has been reversed on direct appeal; and (3) when the timeliness of suits depends on whether the actions accrued upon the reversal of a conviction or upon the subsequent irrevocable termination of the criminal proceedings.

Because the Third Circuit's decision in this case departed from the precedent of this Court on an important federal question, and exposed a direct and substantial conflict among the courts of appeals on the same important matter, this Court should grant Wambaugh's petition for a writ of certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

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